

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 641

Introduced by Assembly Member Feuer

February 16, 2011

~~An act to amend Section 1417.2 of the Health and Safety Code, relating to health facilities. An act to amend Sections 1424, 1424.5, 1428, 1428.2, and 1429 of, and to repeal Section 1417.5 of, the Health and Safety Code, relating to long-term health care facilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as amended, Feuer. ~~Health~~ Long-term health care facilities: civil penalties.

The existing Long-Term Care, Health, Safety, and Security Act of 1973 establishes an inspection and reporting system and a provisional licensing mechanism to ensure that long-term health care facilities, as defined, are in compliance with state statutes, regulations, and standards pertaining to patient care. The act establishes a citation and appeals process, that includes a citation review conference. The act also makes a class "B" citation subject to a civil penalty in an amount not less than \$100 and not exceeding \$1,000 for each and every citation. Existing law creates the State Health Facilities Citation Penalties Account in the Special Deposit Fund with the moneys in this account to be used, upon appropriation, for prescribed purposes.

This bill would repeal the citation review conference process and make conforming changes. It would also increase the maximum of a class "B" citation to \$5,000.

~~Existing law establishes the State Health Facilities Citation Penalties Account into which moneys derived from civil penalties for violations~~

of state law are deposited. Moneys in this account may be used, upon appropriation by the Legislature, for the protection of health or property of residents of long-term health care facilities, as specified.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1417.5 of the Health and Safety Code is
2 repealed.

3 ~~1417.5. (a) The department, in consultation with stakeholders,~~
4 ~~shall develop recommendations to address the findings published~~
5 ~~in the June 2010 report entitled, "Department of Public Health: It~~
6 ~~Reported Inaccurate Financial Information and Can Likely Increase~~
7 ~~Revenues for the State and Federal Health Facilities Citation~~
8 ~~Penalties Accounts" (Report 2010-108). The recommendations~~
9 ~~shall address, but not be limited to, all of the following:~~

10 ~~(1) Streamlining the citation appeal process, including the~~
11 ~~citation review conference process.~~

12 ~~(2) Increasing citation penalty amounts, including late penalty~~
13 ~~fees, and annually adjusting penalty amounts to reflect an inflation~~
14 ~~indicator, such as the California Consumer Price Index.~~

15 ~~(3) Revising state law to enable the department to recommend~~
16 ~~that the federal Centers for Medicare and Medicaid Services impose~~
17 ~~a federal civil money penalty when the department's Licensing~~
18 ~~and Certification Division determines that a facility is out of~~
19 ~~compliance with both state and federal requirements.~~

20 ~~(4) Authorizing the department to collect citation penalty~~
21 ~~amounts upon appeal of the citation and allowing the department~~
22 ~~to place those funds into a special interest bearing account.~~

23 ~~(b) The department shall provide the recommendations to the~~
24 ~~fiscal and policy committees of the Legislature no later than March~~
25 ~~1, 2011.~~

26 SEC. 2. Section 1424 of the Health and Safety Code is amended
27 to read:

28 1424. Citations issued pursuant to this chapter shall be
29 classified according to the nature of the violation and shall indicate
30 the classification on the face thereof.

1 (a) In determining the amount of the civil penalty, all relevant
2 facts shall be considered, including, but not limited to, the
3 following:

4 (1) The probability and severity of the risk that the violation
5 presents to the patient's or resident's mental and physical condition.

6 (2) The patient's or resident's medical condition.

7 (3) The patient's or resident's mental condition and his or her
8 history of mental disability or disorder.

9 (4) The good faith efforts exercised by the facility to prevent
10 the violation from occurring.

11 (5) The licensee's history of compliance with regulations.

12 (b) Relevant facts considered by the department in determining
13 the amount of the civil penalty shall be documented by the
14 department on an attachment to the citation and available in the
15 public record. This requirement shall not preclude the department
16 or a facility from introducing facts not listed on the citation to
17 support or challenge the amount of the civil penalty in any
18 proceeding set forth in Section 1428.

19 (c) Class "AA" violations are violations that meet the criteria
20 for a class "A" violation and that the state department determines
21 to have been a direct proximate cause of death of a patient or
22 resident of a long-term health care facility. Except as provided in
23 Section 1424.5, a class "AA" citation is subject to a civil penalty
24 in the amount of not less than five thousand dollars (\$5,000) and
25 not exceeding twenty-five thousand dollars (\$25,000) for each
26 citation. In any action to enforce a citation issued under this
27 subdivision, the state department shall prove all of the following:

28 (1) The violation was a direct proximate cause of death of a
29 patient or resident.

30 (2) The death resulted from an occurrence of a nature that the
31 regulation was designed to prevent.

32 (3) The patient or resident suffering the death was among the
33 class of persons for whose protection the regulation was adopted.

34 If the state department meets this burden of proof, the licensee
35 shall have the burden of proving that the licensee did what might
36 reasonably be expected of a long-term health care facility licensee,
37 acting under similar circumstances, to comply with the regulation.
38 If the licensee sustains this burden, then the citation shall be
39 dismissed.

1 Except as provided in Section 1424.5, for each class “AA”
2 citation within a 12-month period that has become final, the state
3 department shall consider the suspension or revocation of the
4 facility’s license in accordance with Section 1294. For a third or
5 subsequent class “AA” citation in a facility within that 12-month
6 period that has been sustained following a citation review
7 conference, the state department shall commence action to suspend
8 or revoke the facility’s license in accordance with Section 1294.

9 (d) Class “A” violations are violations which the state
10 department determines present either (1) imminent danger that
11 death or serious harm to the patients or residents of the long-term
12 health care facility would result therefrom, or (2) substantial
13 probability that death or serious physical harm to patients or
14 residents of the long-term health care facility would result
15 therefrom. A physical condition or one or more practices, means,
16 methods, or operations in use in a long-term health care facility
17 may constitute a class “A” violation. The condition or practice
18 constituting a class “A” violation shall be abated or eliminated
19 immediately, unless a fixed period of time, as determined by the
20 state department, is required for correction. Except as provided in
21 Section 1424.5, a class “A” citation is subject to a civil penalty in
22 an amount not less than one thousand dollars (\$1,000) and not
23 exceeding ten thousand dollars (\$10,000) for each and every
24 citation.

25 If the state department establishes that a violation occurred, the
26 licensee shall have the burden of proving that the licensee did what
27 might reasonably be expected of a long-term health care facility
28 licensee, acting under similar circumstances, to comply with the
29 regulation. If the licensee sustains this burden, then the citation
30 shall be dismissed.

31 (e) Class “B” violations are violations that the state department
32 determines have a direct or immediate relationship to the health,
33 safety, or security of long-term health care facility patients or
34 residents, other than class “AA” or “A” violations. Unless
35 otherwise determined by the state department to be a class “A”
36 violation pursuant to this chapter and rules and regulations adopted
37 pursuant thereto, any violation of a patient’s rights as set forth in
38 Sections 72527 and 73523 of Title 22 of the California Code of
39 Regulations, that is determined by the state department to cause
40 or under circumstances likely to cause significant humiliation,

1 indignity, anxiety, or other emotional trauma to a patient is a class
2 “B” violation. A class “B” citation is subject to a civil penalty in
3 an amount not less than one hundred dollars (\$100) and not
4 exceeding ~~one~~ *five* thousand dollars ~~(\$1,000)~~ (\$5,000) for each
5 and every citation. A class “B” citation shall specify the time within
6 which the violation is required to be corrected. If the state
7 department establishes that a violation occurred, the licensee shall
8 have the burden of proving that the licensee did what might
9 reasonably be expected of a long-term health care facility licensee,
10 acting under similar circumstances, to comply with the regulation.
11 If the licensee sustains this burden, then the citation shall be
12 dismissed.

13 In the event of any citation under this paragraph, if the state
14 department establishes that a violation occurred, the licensee shall
15 have the burden of proving that the licensee did what might
16 reasonably be expected of a long-term health care facility licensee,
17 acting under similar circumstances, to comply with the regulation.
18 If the licensee sustains this burden, then the citation shall be
19 dismissed.

20 (f) (1) Any willful material falsification or willful material
21 omission in the health record of a patient of a long-term health
22 care facility is a violation.

23 (2) “Willful material falsification,” as used in this section, means
24 any entry in the patient health care record pertaining to the
25 administration of medication, or treatments ordered for the patient,
26 or pertaining to services for the prevention or treatment of
27 decubitus ulcers or contractures, or pertaining to tests and
28 measurements of vital signs, or notations of input and output of
29 fluids, that was made with the knowledge that the records falsely
30 reflect the condition of the resident or the care or services provided.

31 (3) “Willful material omission,” as used in this section, means
32 the willful failure to record any untoward event that has affected
33 the health, safety, or security of the specific patient, and that was
34 omitted with the knowledge that the records falsely reflect the
35 condition of the resident or the care or services provided.

36 (g) Except as provided in subdivision (a) of Section 1425.5, a
37 violation of subdivision (f) may result in a civil penalty not to
38 exceed ten thousand dollars (\$10,000), as specified in paragraphs
39 (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) or more than ten thousand dollars (\$10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars (\$2,500).

(2) Where the penalty assessed is one thousand dollars (\$1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “B” violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars (\$1,000), or for skilled nursing facilities or intermediate care facilities as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, in excess of two thousand dollars (\$2,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “A” violation, and shall include the right of appeal as specified in Section 1428.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class “A” or class “B” citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class “A” or class “B” violation and as a violation of this subdivision.

(h) Where the licensee has failed to post the notices as required by Section 9718 of the Welfare and Institutions Code in the manner required under Section 1422.6, the state department shall assess the licensee a civil penalty in the amount of one hundred dollars (\$100) for each day the failure to post the notices continues. Where the total penalty assessed is less than two thousand dollars (\$2,000), the violation shall be issued and enforced in the same manner as a class “B” violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is equal to

1 or in excess of two thousand dollars (\$2,000), the violation shall
2 be issued and enforced in the same manner as a class “A” violation
3 and shall include the right of appeal as specified in Section 1428.
4 Any fines collected pursuant to this subdivision shall be used to
5 fund the costs incurred by the California Department of Aging in
6 producing and posting the posters.

7 (i) The director shall prescribe procedures for the issuance of a
8 notice of violation with respect to violations having only a minimal
9 relationship to patient safety or health.

10 (j) The department shall provide a copy of all citations issued
11 under this section to the affected residents whose treatment was
12 the basis for the issuance of the citation, to the affected residents’
13 designated family member or representative of each of the
14 residents, and to the complainant if the citation was issued as a
15 result of a complaint.

16 (k) Nothing in this section is intended to change existing
17 statutory or regulatory requirements governing the ability of a
18 licensee to contest a citation pursuant to Section 1428.

19 (l) The department shall ensure that district office activities
20 performed under Sections 1419 to 1424, inclusive, are consistent
21 with the requirements of these sections and all applicable laws and
22 regulations. To ensure the integrity of these activities, the
23 department shall establish a statewide process for the collection
24 of postsurvey evaluations from affected facilities.

25 *SEC. 3. Section 1424.5 of the Health and Safety Code is*
26 *amended to read:*

27 1424.5. (a) In lieu of the fines specified in subdivisions (c),
28 (d), and (e) of Section 1424, fines imposed on skilled nursing
29 facilities or intermediate care facilities, as specified in paragraphs
30 (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

31 (1) A class “AA” citation is subject to a civil penalty in an
32 amount not less than twenty-five thousand dollars (\$25,000) and
33 not exceeding one hundred thousand dollars (\$100,000) for each
34 and every citation. For a second or subsequent class “AA” citation
35 in a skilled nursing facility or intermediate care facility within a
36 24-month period ~~that has been sustained following a citation review~~
37 ~~conference, or where the licensee has chosen not to exercise its~~
38 ~~right to a citation review conference~~, the state department shall
39 commence action to suspend or revoke the facility’s license in
40 accordance with Section 1294.

(2) A class “A” citation is subject to a civil penalty in an amount not less than two thousand dollars (\$2,000) and not exceeding twenty thousand dollars (\$20,000) for each and every citation.

(3) Any “willful material falsification” or “willful material omission,” as those terms are defined in subdivision (f) of Section 1424, in the health record of a resident is subject to a civil penalty in an amount not less than two thousand dollars (\$2,000) and not exceeding twenty thousand dollars (\$20,000) for each and every citation.

(b) A licensee may, in lieu of contesting a class “AA” or class “A” citation pursuant to Section 1428, transmit to the state department, the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for each violation, within 30 business days after the issuance of the citation.

SEC. 4. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes “AA,” “A,” or “B” citations. ~~As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director’s designee. If the director’s designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director’s designee.~~

(b) ~~If a licensee notifies the director that he or she intends to contest a class “AA” or a class “A” citation, the licensee may first, within 15 business days after service of the citation, notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director’s designee after the citation review conference, of the licensee’s intent to adjudicate the validity of the citation in the superior court in the county in which the~~

1 long-term health care facility is located. In order to perfect a
 2 judicial appeal of a contested citation, a licensee shall file a civil
 3 action in the superior court in the county in which the long-term
 4 health care facility is located. The action shall be filed no later
 5 than 90 calendar days after a licensee notifies the director that he
 6 or she intends to contest the citation, ~~or no later than 90 days after~~
 7 ~~the receipt of the decision by the director's designee after the~~
 8 ~~citation review conference~~; and served not later than 90 days after
 9 filing. Notwithstanding any other provision of law, a licensee
 10 prosecuting a judicial appeal shall file and serve a case management
 11 statement pursuant to Rule 212 of the California Rules of Court
 12 within six months after the department files its answer in the
 13 appeal. Notwithstanding subdivision (d), the court shall dismiss
 14 the appeal upon motion of the department if the case management
 15 statement is not filed by the licensee within the period specified.
 16 The court may affirm, modify, or dismiss the citation, the level of
 17 the citation, or the amount of the proposed assessment of the civil
 18 penalty.

19 (c) If a licensee desires to contest a class "B" citation, the
 20 licensee ~~may request, within 15 business days after service of the~~
 21 ~~citation, a citation review conference, by writing the director or~~
 22 ~~the director's designee of the licensee's intent to appeal the citation~~
 23 ~~through the citation review conference. If the licensee wishes to~~
 24 ~~appeal the citation which has been upheld in a citation review~~
 25 ~~conference, the licensee shall, within 15 working days from the~~
 26 ~~date the citation review conference decision was rendered after~~
 27 ~~service of the citation~~, notify the director or the director's designee
 28 that he or she wishes to appeal the ~~decision~~ *citation* through the
 29 procedures set forth in Section 100171 or elects to submit the
 30 matter to binding arbitration in accordance with subdivision (d).
 31 The administrative law judge may affirm, modify, or dismiss the
 32 citation or the proposed assessment of a civil penalty. The licensee
 33 may choose to have his or her appeal heard by the administrative
 34 law judge or submit the matter to binding arbitration without having
 35 first appealed the decision to a citation review conference by
 36 notifying the director in writing within 15 business days of the
 37 service of the citation.

38 (d) If a licensee is dissatisfied with the decision of the
 39 administrative law judge, the licensee may, in lieu of seeking
 40 judicial review of the decision as provided in Section 1094.5 of

1 the Code of Civil Procedure, elect to submit the matter to binding
2 arbitration by filing, within 60 days of its receipt of the decision,
3 a request for arbitration with the American Arbitration Association.
4 The parties shall agree upon an arbitrator designated from the
5 American Arbitration Association in accordance with the
6 association's established rules and procedures. The arbitration
7 hearing shall be set within 45 days of the election to arbitrate, but
8 in no event less than 28 days from the date of selection of an
9 arbitrator. The arbitration hearing may be continued up to 15
10 additional days if necessary at the arbitrator's discretion. Except
11 as otherwise specifically provided in this subdivision, the
12 arbitration hearing shall be conducted in accordance with the
13 American Arbitration Association's established rules and
14 procedures. The arbitrator shall determine whether the licensee
15 violated the regulation or regulations cited by the department, and
16 whether the citation meets the criteria established in Sections 1423
17 and 1424. If the arbitrator determines that the licensee has violated
18 the regulation or regulations cited by the department, and that the
19 class of the citation should be upheld, the proposed assessment of
20 a civil penalty shall be affirmed, subject to the limitations
21 established in Section 1424. The licensee and the department shall
22 each bear its respective portion of the cost of arbitration. A resident,
23 or his or her designated representative, or both, entitled to
24 participate in the citation review conference pursuant to subdivision
25 (f), may make an oral or written statement regarding the citation,
26 at any arbitration hearing to which the matter has been submitted
27 after the citation review conference.

28 (e) If an appeal is prosecuted under this section, including an
29 appeal taken in accordance with Section 100171, the department
30 shall have the burden of establishing by a preponderance of the
31 evidence that (1) the alleged violation did occur, (2) the alleged
32 violation met the criteria for the class of citation alleged, and (3)
33 the assessed penalty was appropriate. The department shall also
34 have the burden of establishing by a preponderance of the evidence
35 that the assessment of a civil penalty should be upheld. ~~If a licensee~~
36 ~~fails to notify the director in writing that he or she intends to contest~~
37 ~~the citation, or the proposed assessment of a civil penalty therefor,~~
38 ~~or the decision made by the director's designee, after a citation~~
39 ~~review conference, within the time specified in this section, the~~
40 ~~decision by the director's designee after a citation review~~

1 conference shall be deemed a final order of the department and
2 shall not be subject to further administrative review, except that
3 the licensee may seek judicial relief from the time limits specified
4 in this section. If a licensee appeals a contested citation or the
5 assessment of a civil penalty, no civil penalty shall be due and
6 payable unless and until the appeal is terminated in favor of the
7 department.

8 (f) ~~The director or the director's designee shall establish an~~
9 ~~independent unit of trained citation review conference hearing~~
10 ~~officers within the department to conduct citation review~~
11 ~~conferences. Citation review conference hearing officers shall be~~
12 ~~directly responsible to the deputy director for licensing and~~
13 ~~certification, and shall not be concurrently employed as supervisors,~~
14 ~~district administrators, or regional administrators with the licensing~~
15 ~~and certification division. Specific training shall be provided to~~
16 ~~members of this unit on conducting an informal conference, with~~
17 ~~emphasis on the regulatory and legal aspects of long-term health~~
18 ~~care.~~

19 Where the department issues a citation as a result of a complaint
20 or regular inspection visit, and a resident or residents are
21 specifically identified in a citation by name as being specifically
22 affected by the violation, then the following persons may attend
23 the citation review conference:

- 24 (1) ~~The complainant and his or her designated representative.~~
25 (2) ~~A personal health care provider, designated by the resident.~~
26 (3) ~~A personal attorney.~~
27 (4) ~~Any person representing the Office of the State Long-Term~~
28 ~~Care Ombudsman, as referred to in subdivision (d) of Section 9701~~
29 ~~of the Welfare and Institutions Code.~~

30 Where the department determines that residents in the facility
31 were threatened by the cited violation but does not name specific
32 residents, any person representing the Office of the State
33 Long-Term Care Ombudsman, as referred to in subdivision (d) of
34 Section 9701 of the Welfare and Institutions Code, and a
35 representative of the residents or family council at the facility may
36 participate to represent all residents. In this case, these
37 representatives shall be the sole participants for the residents in
38 the conference. The residents or family council shall designate
39 which representative will participate.

~~The complainant, affected resident, and their designated representatives shall be notified by the department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.~~

~~(g)~~

(f) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

~~(h)~~

(g) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (e) of Section 1424, it shall not be trebled unless the department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

~~(i)~~

1 (h) The director shall prescribe procedures for the issuance of
2 a notice of violation with respect to violations having only a
3 minimal relationship to safety or health.

4 ~~(j)~~

5 (i) Actions brought under this chapter shall be set for trial at the
6 earliest possible date and shall take precedence on the court
7 calendar over all other cases except matters to which equal or
8 superior precedence is specifically granted by law. Times for
9 responsive pleading and for hearing the proceeding shall be set by
10 the judge of the court with the object of securing a decision as to
11 subject matters at the earliest possible time.

12 ~~(k)~~

13 (j) If the citation is dismissed, the department shall take action
14 immediately to ensure that the public records reflect in a prominent
15 manner that the citation was dismissed.

16 ~~(l)~~

17 (k) Penalties paid on violations under this chapter shall be
18 applied against the department's accounts to offset any costs
19 incurred by the state pursuant to this chapter. Any costs or penalties
20 assessed pursuant to this chapter shall be paid within 30 days of
21 the date the decision becomes final. If a facility does not comply
22 with this requirement, the state department shall withhold any
23 payment under the Medi-Cal program until the debt is satisfied.
24 No payment shall be withheld if the department determines that it
25 would cause undue hardship to the facility or to patients or
26 residents of the facility.

27 ~~(m)~~

28 (l) The amendments made to subdivisions (a) and (c) of this
29 section by Chapter 84 of the Statutes of 1988, to extend the number
30 of days allowed for the provision of notification to the director,
31 do not affect the right, that is also contained in those amendments,
32 to request judicial relief from these time limits.

33 *SEC. 5. Section 1428.2 of the Health and Safety Code is*
34 *amended to read:*

35 1428.2. In the case of a class "A" or class "AA" citation issued
36 to a long-term health care facility which is appealed, the citation
37 shall expire and have no further legal effect, if the Attorney General
38 has not filed an action in the court of competent jurisdiction, within
39 one year from the date the facility notifies the State Department
40 of *Public Health Services* of its intent to contest the citation in

1 court. Notwithstanding the time limit prescribed in subdivision (a)
2 of Section 1428, at the facility's request, the department shall
3 conduct a citation review conference within 35 days from the date
4 of the request for a citation review conference. Unless a conference
5 is requested by the facility, this section shall not require the
6 department to conduct the conference within the 35-day period.
7 The hearing officer shall issue the decision within 30 days of the
8 citation review conference.

9 *SEC. 6. Section 1429 of the Health and Safety Code is amended*
10 *to read:*

11 1429. (a) Each class "AA" and class "A" citation specified in
12 subdivisions (c) and (d) of Section 1424 that is issued, or a copy
13 or copies thereof, shall be prominently posted for 120 days. The
14 citation or copy shall be posted in a place or places in plain view
15 of the patients or residents in the long-term health care facility,
16 persons visiting those patients or residents, and persons who inquire
17 about placement in the facility.

18 (1) The citation shall be posted in at least the following locations
19 in the facility:

20 (A) An area accessible and visible to members of the public.

21 (B) An area used for employee breaks.

22 (C) An area used by residents for communal functions, such as
23 dining, resident council meetings, or activities.

24 (2) The citation, along with a cover sheet, shall be posted on a
25 white or light-colored sheet of paper, at least 8 ½ by 11 inches in
26 size, that includes all of the following information:

27 (A) The full name of the facility, in a clear and easily readable
28 font in at least 28-point type.

29 (B) The full address of the facility, in a clear and easily readable
30 font in at least 20-point type.

31 (C) Whether the citation is class "AA" or class "A."

32 (3) The facility may post the plan of correction.

33 (4) The facility may post a statement disputing the citation or
34 a statement showing the appeal status, or both.

35 (5) The facility may remove and discontinue the posting required
36 by this section if the citation is withdrawn or dismissed by the
37 department, ~~or is dismissed as a result of a citation review~~
38 ~~conference.~~

39 (b) Each class "B" citation specified in subdivision (e) of Section
40 1424 that is issued pursuant to this section and that has become

1 final, or a copy or copies thereof, shall be retained by the licensee
2 at the facility cited until the violation is corrected to the satisfaction
3 of the department. Each citation shall be made promptly available
4 by the licensee for inspection or examination by any member of
5 the public who so requests. In addition, every licensee shall post
6 in a place or places in plain view of the patient or resident in the
7 long-term health care facility, persons visiting those patients or
8 residents, and persons who inquire about placement in the facility,
9 a prominent notice informing those persons that copies of all final
10 uncorrected citations issued by the department to the facility will
11 be made promptly available by the licensee for inspection by any
12 person who so requests.

13 (c) A violation of this section shall constitute a class “B”
14 violation, and shall be subject to a civil penalty in the amount of
15 one thousand dollars (\$1,000), as provided in subdivision (e) of
16 Section 1424. Notwithstanding Section 1290, a violation of this
17 section shall not constitute a crime. Fines imposed pursuant to this
18 section shall be deposited into the State Health Facilities Citation
19 Penalties Account, created pursuant to Section 1417.2.

20 ~~SECTION 1. Section 1417.2 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~1417.2. (a) Notwithstanding Section 1428, moneys collected~~
23 ~~as a result of state and federal civil penalties imposed under this~~
24 ~~chapter or federal law shall be deposited into accounts that are~~
25 ~~hereby established in the Special Deposit Fund created pursuant~~
26 ~~to Section 16370 of the Government Code. These accounts are~~
27 ~~titled the State Health Facilities Citation Penalties Account, into~~
28 ~~which moneys derived from civil penalties for violations of state~~
29 ~~law shall be deposited, and the Federal Health Facilities Citation~~
30 ~~Penalties Account, into which moneys derived from civil penalties~~
31 ~~for violations of federal law shall be deposited. Moneys from these~~
32 ~~accounts shall be used, notwithstanding Section 16370 of the~~
33 ~~Government Code, upon appropriation by the Legislature, in~~
34 ~~accordance with state and federal law for the protection of health~~
35 ~~or property of residents of long-term health care facilities,~~
36 ~~including, but not limited to, the following:~~

37 ~~(1) Relocation expenses incurred by the department, in the event~~
38 ~~of a facility closure.~~

39 ~~(2) Maintenance of facility operation pending correction of~~
40 ~~deficiencies or closure, including, but not limited to, temporary~~

1 management or receivership, in the event that the revenues of the
2 facility are insufficient.

3 (3) ~~Reimbursing residents for personal funds lost. In the event~~
4 ~~that the loss is a result of the actions of a long-term health care~~
5 ~~facility or its employees, the revenues of the facility shall first be~~
6 ~~used.~~

7 (4) ~~The costs associated with informational meetings required~~
8 ~~under Section 1327.2.~~

9 (b) ~~Notwithstanding subdivision (a), the balance in the State~~
10 ~~Health Facilities Citation Penalties Account shall not, at any time,~~
11 ~~exceed ten million dollars (\$10,000,000).~~

12 (c) ~~Moneys from the Federal Health Facilities Citation Penalties~~
13 ~~Account, in the amount not to exceed one hundred thirty thousand~~
14 ~~dollars (\$130,000), may also be used, notwithstanding Section~~
15 ~~16370 of the Government Code, upon appropriation by the~~
16 ~~Legislature, in accordance with state and federal law for the~~
17 ~~improvement of quality of care and quality of life for long-term~~
18 ~~health care facilities residents pursuant to Section 1417.3.~~

19 (d) ~~The department shall post on its Internet Web site, and shall~~
20 ~~update on a quarterly basis, all of the following regarding the funds~~
21 ~~in the State Health Facilities Citation Penalties Account and the~~
22 ~~Federal Health Facilities Citation Penalties Account:~~

23 (1) ~~The specific sources of funds deposited into the account.~~

24 (2) ~~The amount of funds in the account that have not been~~
25 ~~allocated.~~

26 (3) ~~A detailed description of how funds in the account have~~
27 ~~been allocated and expended, including, but not limited to, the~~
28 ~~names of persons or entities that received the funds, the amount~~
29 ~~of salaries paid to temporary managers, and a description of~~
30 ~~equipment purchased with the funds. However, the description~~
31 ~~shall not include the names of residents.~~